



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 01 2019

Mr. Jesse Hatley
Owner
Modern Diesel Legion, LLC,
809 Genoa Red Bluff
Pasadena, Texas 77504

Re: Notice of Violation of the Clean Air Act and Information Preservation Notice

Dear Mr. Hatley:

The United States Environmental Protection Agency ("EPA") has investigated and continues to investigate Modern Diesel Legion, LLC ("MDL") for noncompliance with the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and its implementing regulations. As summarized in this Notice of Violation ("NOV"), the EPA has determined that MDL offered for sale, sold, and installed parts or components that have a principal effect of bypassing, defeating or rendering inoperative emission control systems or elements of design on motor vehicles or motor vehicle engines. Such emission control systems and elements of design are installed by motor vehicle and motor vehicle engine original equipment manufacturers ("OEMs") in order to comply with CAA emission standards. The EPA has also determined that MDL knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, MDL violated sections 203(a)(3)(A) and 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A-B).

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that "the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare."¹ Congress' purpose in creating the CAA, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."²

¹ CAA§ 101(a)(2), 42 U.S.C. § 7401(a)(2).

² CAA § 101(b)(1)-(2), 42 U.S.C. § 7401(b)(1)-(2).

sense, as well as test results from a test vehicle or engine showing that it satisfies the applicable emission standards.¹¹

OEMs employ many devices and elements of design to meet emission standards to obtain COCs. An element of design is “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”¹² For example, vehicle manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (“NO_x”). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. For diesel-fueled motor vehicles, these devices include diesel particulate filters, exhaust gas recirculation (“EGR”), diesel oxidation catalysts, and selective catalytic reduction. All modern motor vehicles are equipped with electronic control modules (“ECMs”). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Also, an onboard diagnostic system (“OBD”) with the capacity to detect, identify and record malfunctions must be installed and operated on motor vehicles under section 202(m) of the CAA, 42 U.S.C. § 7521(m), and the implementing regulations.¹³ Manufacturers are required to demonstrate (using EPA specified test procedures) that the OBD system detects and identifies malfunctions, including any sensor or other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system, including the oxygen sensor on vehicles equipped with an oxygen sensor.¹⁴ Oxygen sensors are categorized in EPA's regulations as a “major” diagnostic monitor tracked by an OBD system, along with monitors for the catalyst/exhaust aftertreatment devices, engine misfire, and evaporative leaks.¹⁵

Alleged Violations

The EPA has determined that MDL offered for sale, sold, and installed parts or components that have a principal effect of bypassing, defeating, or rendering inoperative emission control systems or elements of design on motor vehicles, primarily diesel trucks. MDL sold three main categories of these “defeat device” products: exhaust emission control delete hardware (sometimes referred to as “straight pipes”); EGR delete hardware; and aftermarket ECM programmers (including “tuners” and software commonly referred to as “tunes”).

¹¹ 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; see also EPA, Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines (Jan. 19, 2001).

¹² 40 C.F.R. § 86.1803-01. See also 40 C.F.R. § 86.094-2.

¹³ See 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05; and § 86.1806-17 (for model year 2017 and later vehicles).

¹⁴ See 40 C.F.R. § 86.1806-05.

¹⁵ See *id.* (using the more general term “exhaust aftertreatment devices” and including diesel exhaust gas recirculation, if equipped).

203(a)(3)(A) and 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(A-B), may be subject to an injunction and/or civil penalty of up to \$4,735 for each violation.¹⁸

Preservation of Information

Under sections 114(a) and 208(a) of the Clean Air Act, 42 U.S.C. §§ 7414(a) and 7542(a), the EPA may require any person who is subject to the vehicle and engine requirements of the Act, 42 U.S.C. §§ 7521–7554, to establish, maintain, and make available information the EPA may reasonably require to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder.

The EPA hereby requires MDL to maintain and make available information as part of an EPA investigation to determine compliance with section 203 of the Clean Air Act, 42 U.S.C. § 7522.

Specifically, MDL is required to maintain and make available at the above-listed address, for inspection by EPA personnel, all information, records and devices in your possession related in any way to the following:

- (a) The manufacturing, sale, offering for sale, purchase, repair, or installation of any part or component of or for any motor vehicle or motor vehicle engine that changes, affects, or bypasses any element of design related to emissions of air pollution, including but not limited to any: diesel particulate filter system; exhaust gas recirculation system; catalytic converter system; on-board diagnostic system; selective catalytic reduction system; and sensors, signals, or records related to these systems. This includes the parts or components themselves.
- (b) The manufacturing, sale, offering for sale, purchase, repair, or installation of any part or component of or for any motor vehicle or motor vehicle engine that changes, affects, or bypasses that vehicle's or engine's electronic control module. This includes but is not limited to any part or component that relates to fueling strategy or on-board diagnostic systems. This includes the parts or components themselves.

This requirement does not include any part or component that was not in your custody or control at the time of delivery of this letter. This requirement also does not include any part or component (whether or not installed on a vehicle or engine) that is not at your business location due to its use in the normal course of your business.

In sum, MDL is required to leave in place all information, records, parts, and components that EPA may reasonably inspect to determine compliance with the vehicle and engine requirements of the Act. That said, this Request for Information does not require that you change your normal course of business, such as changing your trucks scheduled deliveries. This Request for Information in no way affects any preexisting requirements under the Act and related regulations to keep and maintain information.

¹⁸ Id.; the EPA has implemented statutorily-mandated inflation adjustments by periodically updating maximum penalty levels as codified at 40 C.F.R. § 19.4.